

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Williams Power Company, Inc.

Docket No. ER04-373-000

ORDER ACCEPTING INFORMATIONAL FILING FOR FILING, ACCEPTING
PROPOSED TARIFF SHEETS, DENYING CONFIDENTIAL TREATMENT OF
CERTAIN ATTACHMENTS TO INFORMATIONAL FILING AND NOTIFYING
COMPANY OF RELEASE OF DOCUMENTS

(Issued February 27, 2004)

1. In this order, the Commission accepts for filing Williams Power Company, Inc. (Williams) Schedule F Informational Filing under its Reliability Must-Run (RMR) Agreements (December 31 Filing) with the California Independent System Operator Corporation (California ISO) for Alamitos and Huntington Beach generating facilities. In addition, the Commission accepts proposed revised tariff pages to the RMR Agreements submitted by Williams, to be effective January 1, 2004, as requested. Finally, the Commission denies Williams' request that certain attachments to the Informational Filing be treated as confidential. This order benefits customers because it allows Williams to continue to provide must-run generation to the California ISO.

I. Background

2. Williams provides service to the California ISO pursuant to its RMR Agreements,¹ specialized service agreements. Williams is required to adjust its rates annually using the

¹ The RMR Agreements follow a generic, standard form that was agreed to as part of a settlement approved in California Independent System Operator Corporation, et al., 87 FERC ¶ 61,250 (1999). Under the terms of the settlement, each RMR owner files annual updates to the agreements. A revised, generic standard form that was agreed to as part of a second offer of settlement was approved in California Independent System Operator Corporation, et al., 93 FERC ¶ 61,089 (2000).

formula detailed in the RMR Agreements. Under the RMR Agreements, Williams must also submit a Schedule F filing detailing and supporting its Annual Fixed Revenue Requirements (AFRR) and its variable operation and maintenance rates for RMR facilities. The RMR Agreements also contain provisions allowing the California ISO to request annual extensions of the agreements.

II. Description of the Filing

3. On December 31, 2003, Williams filed in the instant docket the Informational Filing mandated by Schedule F of the RMR Agreements between Williams and the California ISO regarding the Alamitos and Huntington Beach generating facilities.

4. In addition, pursuant to Section 205 of the Federal Power Act (FPA),² Williams filed revised tariff sheets pertaining to the RMR Agreements for the Alamitos and Huntington Beach RMR units. Williams explains that the revised pages reflect an agreed-upon one-year extension of the RMR Agreements. According to Williams, the revised tariff sheets: (1) reflect that the agreements have been extended for another calendar year; (2) update Schedule A with respect to contract service limits; (3) update Schedule B with respect to certain rates and charges; (4) update Schedule C³ with respect to variable cost payments; (5) update Schedule D with respect to the number and charge for Prepaid Start-Ups and (6) update Schedule J's notice information.

5. Williams explains that the Schedule F Informational Filing and related and revised tariff pages reflect an agreement by and among Williams, the California ISO, California Public Utilities Commission (California Commission), Southern California Edison Company (SoCal Edison), California Electricity Oversight Board (California EOB) and AES Southland, LLC (AES Southland) (collectively the Parties). According to Williams, the principle terms and conditions agreed to by the Parties are: (1) a fixed option payment factor of twenty-eight percent (28%) for Alamitos Unit 3 and Huntington Beach Units 1 and 2; (2) an AFRR of \$7,437,012 for Alamitos Unit 3; (3) an AFRR of \$14,420 for Huntington Beach Units 1 and 2; (4) a relinquishment, for one year beginning January 1, 2004, of the Williams option to transfer any of the RMR designated units to Condition 2

² 16 U.S.C. § 824(d) (2000).

³ We note that while Williams states that it included revised pages for Schedule C, none were included in its filing. Accordingly, this order does not address any possible revisions to Schedule C.

from Condition 1.⁴ Williams states that as part of the agreement, and with the exception of a challenge to the confidentiality of certain attachments to the instant filing, the California ISO, California Commission, SoCal Edison, California EOB and AES Southland agreed not to lodge a protest to, or against, the instant filing.

6. Williams states that the Parties further agree that all aspects of this filing are made pursuant to a negotiated agreement and shall not be used or cited as precedent in any ongoing or future proceeding concerning any RMR Agreements.

III. Notice of Filing and Pleadings

7. Notice of Williams' filing was published in the Federal Register, 68 Fed. Reg. 2,589 (2004), with comments interventions and protests due on or before January 21, 2004.

8. The California Commission filed a notice of intervention and the California EOB filed a motion to intervene one day out-of-time. The California ISO and SoCal Edison both filed timely motions to intervene and limited protests.

9. SoCal Edison and the California ISO (collectively, Protestors) protest Williams' request for confidential treatment of certain documents submitted in conjunction with the

⁴ According to the RMR Agreement, a Unit under Condition 1 may participate in Market Transactions and Owner will retain all revenues from participation in Market Transactions. A Unit under Condition 2 shall bid in accordance with section 6.1 (b) to participate in Market Transactions when ISO has issued a Dispatch Notice for the Unit and Owner will not retain revenues from participation in Market Transactions. A Unit under Condition 2 shall not participate in a Market Transaction when ISO has not issued a Dispatch Notice for the Unit.

Schedule F Informational Filing.⁵ SoCal Edison states that the agreement between the Parties, as reflected in the Transmittal Letter, is in the best interest of the SoCal Edison ratepayers, is just and reasonable, and therefore, should be approved by the Commission. However, SoCal Edison opposes the confidentially designation as inappropriate, and asks the Commission to make the information included in Attachments A through J to Williams' Informational Filing available to the public.

10. Protestors argue that the Informational Filing was made pursuant to Schedule F of its RMR Agreements with the California ISO. Protestors contend that Schedule F (Article I, Part B) requires that, in order to justify its AFRR and Variable O&M rates for the coming year, Williams must provide:

- i. detailed workpapers showing the derivation of costs under the Formula for the relevant Cost Year along with supporting schedules showing the data used in applying the formula, presented in a format consistent with the presentation of information in the FERC Form No. 1;
- ii. a clear identification of the depreciation rates reflected in claimed costs for the Cost Year and the rate of return and every other stated item (i.e., any item which appears as a numerical value in the Formula and which only may be changed by a filing with the FERC);
- iii. a comparison of the major components of the resulting revenue requirement for the relevant Cost Year with the corresponding components of the revenue requirements that result from the application of the Formula using costs from the Owner's FERC Form No. 1 relating to the preceding calendar year;

⁵ The Attachments filed as confidential in Williams' Informational Filing are: Attachment A – Report of AFRR for the Alamitos and Huntington Beach Facilities; Attachment B – O&M Expense and Emissions; Attachment C – Depreciation Expense; Attachment C1 – Depreciation Rates; Attachment D – Taxes Other Than Income Taxes; Attachment E – Gross Plant Investment; Attachment F – Depreciation Reserve; Attachment G – Production Plant ADIT; Attachment H – Miscellaneous Support; Attachment I – Cost Allocation By Unit (Actual); Attachment I1 – Cost Allocation by Unit (Reflecting Parties' Settlement); and Attachment J – Comparison of Major Components of Revenue Requirement for Cost Year With Corresponding Components Resulting from the Application of the Formula.

- iv. such additional documentation as to specific items of costs required by the Formula.

Protestors assert that the information for which Williams seeks confidential treatment is the type of information⁶ required to be included in its Informational Filing for rate and cost-support.

11. The California ISO points out that the third paragraph of Schedule F of each of the RMR Agreements, in Part B of Article I, specifies that “[t]he Owner shall provide each Information Package to the ISO . . . in a suitable electronic format” and that “[t]he ISO shall post the Information Package on its web site” (emphasis added). The California ISO adds that the paragraph does not make any provision for the ISO to redact or treat as confidential any portion of the Information Package. The California ISO also notes that the fourth paragraph provides for the nondisclosure or confidentiality of information should the need arise during a discovery process concerning an Information Package submitted to the Commission. The California ISO argues that the Schedule F Information Filing is not being provided pursuant to a discovery process. The California ISO claims that Williams has not provided any justification for the requested confidential treatment, and it would serve no purpose to grant Williams’ request, given that the California ISO is required to post the same information in its entirety on the California ISO’s web site.

12. On January 23, 2004, Williams filed a letter with the Commission stating that AES Southland, L.L.C., the owner of the Alamitos and Huntington Beach facilities, has agreed to remove the confidentiality designation from Attachments A, C, C-1, and J. Copies of those attachments without the confidentiality designation were attached to Williams’ January 23, 2004 letter.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely motions to intervene and notice of intervention

⁶ Report of Annual Fixed Revenue Requirement for the RMR Units (Attachment A), O&M Expense (Attachment B), Depreciation Expense (Attachment C), Depreciation Rates (Attachment C1), Taxes Other Than Income Taxes (Attachment D), Gross Plant Investment (Attachment E), Miscellaneous Support (Attachment H), and Cost Allocation by RMR Unit (Attachment I).

serve to make the entities that filed them parties to this proceeding. We will also grant the California EOB's unopposed late motion to intervene given its interest in this proceeding, the early stage of the proceeding and the absence of any undue prejudice or delay.

B. Analysis

14. We will accept for filing Williams' Informational Filing. We also find that the proposed tariff sheets appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Williams' proposed tariff sheets to be effective January 1, 2004, as requested.

15. We will deny Williams' request for confidential treatment. Williams has not set forth any explanation to justify privileged treatment of Attachments A through J. "Williams makes no claim of special vulnerability, cite no special circumstances uniquely applicable to them, nor is it apparent that Schedule F provides for the confidential treatment requested." The Commission has held that the longstanding benefits of public access to filings generally outweigh the potential competitive disadvantage of public disclosure.⁷ Section 205(c) of the FPA requires that every public utility file with the Commission and "keep open ... for public inspection, schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services." 16 U.S.C. § 824(d) (2000). A fundamental purpose of this requirement is to provide the Commission and the public with the ability to ensure against undue discrimination in a public utility's contracting practices with respect to jurisdictional services.

16. The Commission gives notice pursuant to Section 388.112(e) of the Commission's regulations that it will make the confidential attachments public five days after the issuance of this order.⁸

⁷ See *Southern Company Services, Inc., et al.*, 100 FERC ¶ 61,328 (2002); Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002).

⁸ This order constitutes notification before release as required by Section 388.112(e) of the Commission's Regulations. 18 C.F.R. § 388.112(e) (2003).

The Commission orders:

(A) Williams' Schedule F Informational Filing is hereby accepted for filing, as described in the body of this order.

(B) Williams' proposed tariff pages are hereby accepted, to be effective January 1, 2004, as discussed in the body of this order.

(C) Williams' request for confidential treatment is hereby denied, as discussed in the body of this order.

(D) Williams is hereby on notice that the Commission intends to release the documents for which privileged treatment was sought five days from the issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.